IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5037 of 1994

with

SPECIAL CIVIL APPLICATION No 13126 of 1993

with
SPECIAL CIVIL APPLICATION NOS. 10734 OF 1994 TO 10744 OF 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISH GURJAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5037 of 1994
MR HJ NANAVATI for Petitioner No. 1
Mrs. Manisha, L. Shah, AGP for Respondent No. 1,3
NOTICE SERVED for Respondent No. 2,4
NOTICE SERVED BY DS for Respondent No. 5

2. Special Civil Application No. 13126 of 1993, and 10734 of 1994 to 10744 of 1994
MR KS NANAVATI for Petitioner No. 1
Mrs. Manisha, L. Shah, AGP
for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 20/10/2004

COMMON ORAL JUDGEMENT

1. In this group of petitions, the common challenge is to the Notifications issued by the District Magistrate in exercise of his powers under Section 33(1)(b)(c) of the Bombay Police Act, 1951. The relevant provisions of Section 33(1)(b)(c) of said Act are reproduced hereunder:

"33. Power to make rules or regulation of traffic and for preservation of order in public place, etc.
(1) The Commissioner, with respect to all or any of the following matters specified in this sub-section and the District Magistrate, with respect to all or any of the said matters except the matters referred to in sub-section (1AA), may make, alter or rescind rules or orders not inconsistent with this Act, in areas under their respective charges or any part thereof, namely:-
(a) xx xx
(aa) xx xx
(b) regulating traffic of all kinds in streets, and public places, and the use of streets and public places, and the use of streets and public places by persons riding, driving, cycling walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public;
(c) regulating the conditions under which vehicles may remain standing in streets and public places, and the use of streets as halting places for vehicles or cattle."

The recital in the said Notifications clearly mentions about requirement of issuance of the notifications in the public interest and to remove hardship to the public at large. It has restricted parking of vehicles operated by the private taxi operators within the periphery of 500 meters of the State Transport Bus-Station, and, after inviting objections from the public and the affected parties, a reasonable restriction was put for public good, as stated in the notifications.

2. The substantial challenge, as canvassed by the learned counsel for the petitioners, is to the extent that the clauses (b) and (c) of sub-section (1) of Section 33 of the Act do not prescribe such an eventuality or exigency to remove hardship of passengers travelling by the State Transport Corporation buses and the proper procedure was not followed by the Authority before issuance of the notifications. The said notifications affect the fundamental right guaranteed to the petitioners to carry on the business as private tax operators and a number of persons employed by the private taxi operators will be affected and more particularly

during peak period of Diwali holidays by enforcing such restrictions as per the said notifications.

3. When the petitions came up for admission hearing, the Court, while issuing Rule, refused interim relief.

4. Learned Assistant Government Pleader, Mrs. Shah, appearing for the respondents-Authorities, has justified the procedure adopted by the Authority and submitted that the objections were invited before issuance of the notifications from the concerned parties. Not only that the said notifications were issued in the public interest but also to mitigate the hardship faced by the passengers travelling in S.T.Buses. The exercise of power of the Authority, therefore, cannot be said to be arbitrary or unreasonable since a limited restriction of parking private vehicle was imposed, i.e. about 500 meters within the periphery of the S.T.Bus-station. The learned Assistant Government Pleader has further submitted that the District Magistrate is empowered to issue such notifications and, even the remedy available to the petitioners to approach the higher authority by filing appeals/representations is not exhausted by the petitioners.

5. Having heard the learned advocates for the parties, in my view, the issuance of notifications under Section 33(1)(b)(c) of the Act by the concerned District Magistrate in the respective petitions cannot be said to be arbitrary exercise of power or causing any hardship to the private taxi operators particularly when the restriction is imposed for the area of 500 meters within periphery of the S.T.Bus-station. Not only that the Authority has also followed the procedure by inviting objections from the affected persons and the decision is taken purely on the basis of the public interest. Under the circumstances, the decision of the Authority to issue notifications restricting movement of vehicles belonging to the private taxi operators cannot be said to be unreasonable in any manner which may lead to restriction on carrying out their business as guaranteed under Part III of the Constitution of India. I do not find any substance in the petitions. Rule is discharged in each petition with no order as to costs.

(Anant S. Dave, J.)
(swamy)